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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1969

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No. 1421

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STATE OF IOWA,

*Petitioner,*

v.

BENNETT CULLISON,

*Respondent.*

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## MEMORANDUM OF RESPONDENT IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

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### RESPONDENT'S MEMORANDUM TO PETITIONER'S REASONS FOR GRANTING THE WRIT

Respondent files this Memorandum to affirm his desire that Writ issue in this matter. The Question Presented in the Petition (page 2), from citations appearing therein, indicates affirmance by Courts in or of the states of New York and California. Such citations affirm a warrantless and unreasonable search and seizure, without waiver by the

Parolee of his constitutional rights, may be done by a Parole Officer in the course of surveillance duties toward or over his Parolee in the states cited. The quantity and quality of decisions on this Federal Constitutional issue present a hopelessly confused situation. Courts other than those of New York and California, ruling on the same question, reached an opposite conclusion. In *Brown v. Kerney, Warden,* 355 F.2d 199 (1966), the United States Circuit Court of Appeals, Fifth Circuit, considered the question of a Petitioner's parole revocation in a habeas corpus action allegedly based solely on evidence obtained by illegal search and seizure, that Court in denying the Writ because of ample (other) grounds for parole revocation, held:

> ". . . a Parolee is entitled to constitutional protection from illegal search and seizure . . ." (p. 200)

In *People v. Overall,* 7 Mich. App. 153 (1967), the Michigan Court held that evidence taken under a warrantless and unreasonable search of premises of a Parolee is inadmissible.

In adding the subject decision from the Supreme Court of Iowa to the foregoing it would appear that efforts to construe the Federal Constitutional question involved herein, whether by reference to the Fourth Amendment to the Constitution of the United States, or by reference to the counterpart of such Fourth Amendment in State Constitutions, five of possible fifty state jurisdictions (or Federal District or Circuit Courts within such different states) reached divided and opposite positions on the issue involved.

It is assumed that paroles, both Federal and State, operate under generally similar principles. The circumstance of such conditioned leaves from penal institutions includes provisions for supervision and surveillance calculated to best serve the rehabilitation of the Parolee.

It is highly improbable that any acceptable projection of the dividing line between Constitutionally guaranteed liberties and rehabilitative surveillance privileges can be established for all fifty states except by determination of this

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honorable Court. The avoidance of further litigation in post-felony conviction files, both in Federal and State Courts, can be best accomplished by a determination of the Question Presented by this Court.

In its Petition, the honorable Attorney General for the State of Iowa addresses the question of finality in the subject decision of the Supreme Court of Iowa, and points out that the State of Iowa, if it should now try the Parolee under a charge of receiving stolen merchandise would be confronted with the necessity of proceeding with the affirmative in a criminal matter—without evidence. While concurring in this philosophy, it is respectfully submitted that the issue of finality is not the disposition of a criminal matter in the District Court of Iowa, but correctness of the opinion of its Supreme Court in *"The State of Iowa v. Cullison, Judge."*

In this litigation, the disposition of the issue made by the Supreme Court of Iowa is final. Its decision (Petitioner's appendix, p. A-13) contains neither remand nor procedendo, since the original Petition was instituted and filed at the level of the Supreme Court of Iowa, and not at the Iowa District Court level. The Petition for Writ, originally filed in the Supreme Court of Iowa, was not an appeal from the District Court of Iowa in and for Page County (in which the original criminal charge was filed). The Supreme Court of Iowa by annulling its earlier Writ issued its opinion on an original, rather than an appellant proceedings.

Respondent confesses this Memorandum is lately filed, and would show the Court that in accepting responsibility of representation of the original Defendant under indigent assignment, Counsel did not contemplate the possibility of an appeal of one of the issues raised in that matter to the Supreme Court of the United States. Consequently, upon the filing of Petition by the honorable Attorney General of the State of Iowa, Counsel found himself without qualification to appear herein until the privilege of his admission to

the Bar of the Supreme Court of the United States was concluded May 4, 1970.

Respectfully submitted,

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May 13, 1970

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